IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2698 of 2003

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANAGER GATI CARGO MANAGEMENT SERVICES - Petitioner(s)

Versus

PANDEY NARENDRAKUMAR RAJITRAM - Respondent(s)

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Appearance :

MR KV GADHIA for Petitioner No(s).: 1.

MR TR MISHRA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 19/07/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Labour Court, Ahmedabad, dated 20th January 2003 below Exh. 7 in Recovery Application No.

1499 of 2001 and also prayed for a declaration that the Recovery Application filed by the motor transport worker under Section 33(c)(2) of The Industrial Disputes Act, 1947 [“the I.D. Act” for short] is not maintainable.

2. The petitioner is a Motor Transport Undertaking and governed by Motor Transport Workers Act, 1961. The respondent workman filed a Recovery Application No. 1499 of 2001 before the Labour Court, Ahmedabad under Section 33(c)(2) of the ID Act claiming Rs. 53,015.16 ps, towards unpaid salary, house rent allowance, medical allowance, tea allowance and bonus. Considering the provisions of the Motor Transport Workers Act, 1961 [“MTW Act” for short] being a special enactment for benefits of motor transport workers more particularly considering Section 25 of the MTW Act by which the provisions of Payment of Wages Act, 1936 are made applicable, the petitioner submitted an application below Exh. 7 by raising preliminary objection with regard to maintainability of the application under Section 33(c)(2) of the ID Act contending inter alia that in view of the provisions of MTW Act the application under Section 33(c)(2) of the ID Act is not maintainable and the respondent workman is required to move the authority under the Payment of Wages Act. The petitioner relied upon the judgment of this Court in the case of Naranji Peraji Transport Co. Vs. Ramnikbhai B. Waghela, reported in 1998 (1) GLH 88 in support of his

above submission. The Labour Court by its order dated 20th January 2003 dismissed the said application by holding that the workman can opt for the remedy available under any of the Act and there is no provision in the MTW Act that the application under Section 33(c)(2) of the ID Act is not maintainable. Being aggrieved and dissatisfied with the order passed by the Labour Court dated 20th January 2003 passed below Exh. 7 in Recovery Application No. 1499 of 2001, the petitioner has preferred the present Special Civil Application for the aforesaid relief and the declaration.

3. Shri Biren Vaishnav, appearing for Shri KV Gadhia, learned advocate on behalf of the petitioner has vehemently submitted that the Labour Court has erred in dismissing the application below Exh. 7 and holding that the application under Section 33(c)(2) of the ID Act is maintainable with regard to workmen of motor transport. He has further submitted that the Labour Court has materially erred in not relying upon and following the judgment of this Court in the case of ***Naranji Peraji Transport Co., (supra)*** and it has resulted into miscarriage of justice. He has submitted that this Court in the aforesaid decision of *Naranji Peraji Transport Co., (supra)*dealing with the provisions of MTW Act has specifically held that when there is a special remedy to approach the authority under the Payment of Wages Act is specifically made applicable to the workers of motor

transport exercise of jurisdiction under the ID Act is not warranted. He has also relied upon the judgment of the Delhi High Court in the case of Delhi Transport Corporation Vs. D.D. Gupta & Another, reported in (1984) II-LLJ Page 79 and therefore it is requested to allow the present Special Civil Application by holding that the application under Section 33(c)(2) of the ID Act is not maintainable.

4. Per contra, Shri T.R. Mishra, learned advocate appearing on behalf of the respondent has relied upon the judgment of the Madras High Court in the case of Ananda Transport, Tirupathur, Vs. M. Chellaiah & Others, reported in 1975 (2) LLJ Page 39; Judgment of the Mysore High Court in the case of B. Narasimha Pai Vs. Damodara Bhat and Another reported in 1971 LAB.I.C. Page 378; Judgment in the case of Management, Sri Balasubramanian Lorry Service, Virudhunagar Vs. P. Paramasiva Nadar, C/o. Madurai Motor Thozhillalar Sangam, Madurai and Another, reported in 2000 (4) LLN Page 279; and Judgment of the Delhi High Court in the case of Delhi Transport Corporation Vs. D.D. Gupta & Another, reported in 1978 I-LLJ Page 122. Relying upon the aforesaid Judgments, it is submitted that irrespective of the provisions under the MTW Act the jurisdiction under Section 33(c)(2) of the I.D. Act is not ousted and it is for the workman to choose the forum. Relying upon the Judgment of the Madras High Court in the case of

Ananda Transport (Supra) it is submitted that as held by the Madras High Court in the aforesaid decision in a case relating to the workman of motor transport of dispute with regard to wages, the application under Section 33(c)(2) of the ID Act is maintainable. Relying upon the judgment in the case of *B. Narasimha Pai (supra)* while arguing that irrespective of the bar of suit as envisaged under Section 22 of the Payment of Wages Act it is held that the power of Labour Court to adjudicate upon claims of workman for recovery of money due from employer is not taken away by Section 15 of Payment of Wages Act, it is submitted that the Labour Court has rightly rejected the application Exh. 7 and therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the petitioner is a Motor Transport Undertaking and that parties are governed by the provisions of Motor Transport Workers Act, 1961. Section 25 of the Motor Transport Workers Act, reads as under:

> **"25. Act 4 of 1936 to apply to payment of wages to motor transport workers.**___
> The Payment of Wages Act, 1936 (4 of 1936), as in force for the time being, shall apply to motor transport workers engaged in a motor transport undertaking as it applies to wages payable in an industrial establishment as if the said Act had been extended to the payment of wages of such motor transport workers by

> a notification of the State Government under sub-section (5) of Section 1 thereof, and as if a motor transport undertaking were an industrial establishment within the meaning of the said Act."

Thus, there is a special remedy available to the workers of the motor transport for the dispute with regard to payment of wages. Considering the judgment of the Division Bench of the Delhi High Court in the case of *Delhi Transport Corporation Vs. D.D. Gupta & Another (supra)*, and considering various other judgments, the learned Single Judge of this Court in the case of *Naranji Peraji Transport Co., (supra)* while observing that the only remedy available to the motor transport worker is under the Payment of Wages Act, 1936 and the application by the workman of motor transport under Section 33(c)(2) before the Labour Court is not maintainable, has held that the Labour Court wrongly rejected the preliminary issue raised by the Transport Company.

6. So far as the judgments relied upon by the learned advocate appearing on behalf of the respondent workman is concerned, it is necessary to observe that the judgment of the Madras High Court in the case of *Ananda Transport (supra)* came to be considered by the Delhi High Court in its decision in the case of *Delhi Transport Corporation (supra).* The Division Bench of Delhi High Court has held that in view of the special provision made under the Motor Transport Workers Act the remedy available to the

motor transport workers is under the Payment of Wages Act and the application under Section 33(c)(2) is not maintainable. So far as another judgment delivered by the learned Single Judge of Delhi High Court relied upon by the learned advocate appearing on behalf of respondent in the case *of Delhi Transport Corporation Vs. D.D. Gupta & Another,* reported in *1978 I-LLJ Page 122 (supra)*is concerned, the same is not helpful to the respondent as the said judgment has been set aside subsequently by the Division Bench of the Delhi High Court vide Judgment reported in *1984 II-LLJ Page 79,* which is relied upon by the learned Single Judge while taking the decision in *Naranji Peraji Transport Co. (supra).* Considering the aforesaid facts and circumstances, more particularly, while perusing the judgment of the learned Single Judge of this Court in the case of *Naranji Peraji Transport Co. (supra)* which deals with the same provision in a similar case of motor transport worker who had moved an application under Section 33(c)(2) of the I.D. Act, the order passed by the Labour Court dated 20th January 2003 below Exh. 7 in Recovery Application No. 1499 of 2001 cannot be sustained and the same is required to be quashed and set aside and the same is accordingly quashed and set aside. Consequently, it is held that the application submitted by the respondent under Section 33(c)(2) of the I.D. Act claiming wages is not maintainable.

7. For the reasons stated above, the petition succeeds. The impugned order passed by the Labour

Court, Ahmedabad, dated 20th January 2003 below Exh.7 in Recovery Application No. 1499 of 2001 is hereby quashed and set aside. It is hereby held and declared that the application submitted by the respondent workman for wages under section 33(c)(2) of the I.D. Act is not maintainable. However, it is made clear that it will be open to the respondent workman to approach the authority under The Payment of Wages Act and as and when such an application is made the same can be dealt with in accordance with law and on merits. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.